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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/905,343

07/14/2001

Anjali Chandnani

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7590

08/15/2006

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EXAMINER

SCHUBERT, KEVIN R

ART UNIT

PAPER NUMBER

2137

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/905,343

Applicant(s)

CHANDNANI ET AL.

Examiner

Kevin Schubert

Art Unit

2137

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


EMMANUEL L. MOISE
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

With regards to the 112, first paragraph, rejection of claims 24-26, Applicant argues that the limitation "comparing the at least one software operation with a repository of virus detection data" is not new matter. Applicant believes the foregoing to be particularly supported by the following passage:

"(a) search for a pattern p1 corresponding to access to a system macro; and (b) if pattern p1 is found in (a), search for one or more patterns corresponding to modification, replacement or deletion of the system macro". (Specification, page 11, lines 3-5).

Examiner respectfully disagrees. To begin with the foregoing passage makes no indication that an operation is performed in software and not an alternative method (e.g. hardware). Second, even if searching for a pattern is deemed a particular type of "software operation", mere disclosure of a particular type does not provide support for the much broader "software operation" which encompasses all possible software operations. Third, even if searching for a pattern is a software operation and even if searching for a pattern is representative of each and every software operation, the passage cited does not compare the searching for a pattern with a repository of virus detection data. At best, the passage teaches "search[ing] for a pattern" and "search[ing] for one or more patterns corresponding to modification, replacement or deletion of the system macro". This is not the same thing as "comparing the at least one software operation with a repository of virus detection data" as claimed.

With regards to the 102(a) rejection of claims 1,4-9, 13-16, and 19-26 under Fermoye, Applicant provides a recitation of the claim limitations and 1) a general allegation that parts a and b of the claim are not met (Remarks: page 2, lines 15-23) and 2) statements that Fermoye merely mentions lexical scanning but does not teach that it should be performed (Remarks: page 2, lines 23-27).

Regarding 1), Fermoye discloses that lexical analysis is used by the MailMarshal to thwart a script language virus, such as the "I Love You" virus. Further, Fermoye teaches that detection data (part b) may utilize keywords (language description data) (part a) to detect the viral code. Examiner notes that the foregoing is merely one interpretation and that other interpretations of the expansive language may be possible under MPEP 2111. Examiner respectfully notes that the interpretation provided has not changed since the non-final action mailed January 13, 2005 (four actions ago). Yet, Applicant has provided no analysis now or in any of the previous responses as to how, specifically, the language of the claims is believed to patentably define over the Fermoye reference (in accordance with 37 CFR 1.111(b)). In contrast, Applicant continues to make general assertions that the recanted claim limitations are absent from Fermoye.

Regarding 2), Fermoye teaches the following:

"By monitoring and controlling keywords (lexical scanning), users or system administrators can effectively remove the threat of viruses, including the current 'I Love You' " (Fermoye: page 3, 2nd column, lines 16-19)

From at least the above, one of ordinary skill in the art would reasonably conclude that by monitoring and controlling keywords via lexical scanning, users or system administrators can effectively remove the threat of viruses, including the "I Love You". In contrast, Applicant appears to argue that the phrase "lexical scanning" loiters within the foregoing with no purpose and that there is no disclosure of any lexical scanning that should be performed (Remarks: page 2, lines 23-27). Such an argument is not persuasive on any level. Fermoye has not randomly mentioned lexical scanning. One of ordinary skill in the art would reasonably conclude that the monitoring and controlling keywords is via lexical scanning.